



<u>Decision Ref:</u>	2020-0220
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Disputed transactions
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

A junior type account was opened on the Complainant's behalf by her parents when she was approximately 3 months old. The Complainant's father was the person authorised, at account opening, to make withdrawals from the account until the Complainant reached seven years of age.

Following the Complainant's seventh birthday, her father continued to make withdrawals from the account until substantially all of the money in the account was withdrawn. The Provider advised the Complainant that her father continued to have authority to make withdrawals from the account as it was not provided with a specimen of the Complainant's signature which was required before she would be authorised to manage the account.

The Complainant's Case

The Complainant states that she held a junior type account with the Provider and that her father was a signatory on the account. The Complainant states that her father "... *unilaterally dissipated funds from the [account].*" The Complainant states that the account balance was reduced over a period of years from €30,217.94 on **9 March 2009** to €296.87 on **16 March 2016**. The Complainant states that no consent was ever given to her father to withdraw funds from the account during this period and that she did not benefit from the funds withdrawn by her father.

The Complainant also submits that neither she nor her mother were aware that it was necessary to furnish the Provider with further documentation in respect of her signature, in order for her to become the sole authorised signatory on the account. In resolution of this

complaint, the Complainant wants the Provider to refund the money taken from her account by her father.

The Provider's Case

The Provider refers to the account application form, which was signed by the Complainant's parents at account opening on **10 January 2002**. The Provider states that the Complainant's father's name was inserted at paragraph (a), indicating that the Complainant's parents wished for only his signature to be required, to effect withdrawals from the account during the period prior to the Complainant attaining the age of seven.

The Provider states that a tick was also placed beside option (b)(iii), indicating the Complainant's parents' wish that once the Complainant turned seven years old, only her signature would be required to effect withdrawals from the account.

The Provider states that in order for the signing authority to change over to option (b)(iii), a specimen of the Complainant's signature was required from the Complainant and witnessed by her parents as set out on the application form. The Provider states that this update to the mandate did not occur, as a specimen signature from the Complainant, witnessed by her parents, was never furnished to it. Therefore, the Provider maintained that:

"... the existing mandate ... reflects the current signing authority on the account ..."

The Provider states that the account was used by the Complainant's parents, as the recipient account for monthly child benefit payments. While the account was designated for regular savings, the Provider has no control over the use for the account in terms of funds received subject to anti-money laundering obligations. The Provider states that the Complainant's father advised it that this money was managed by him and was used for the benefit of the family with the full knowledge of the Complainant's mother. The Provider states that the Complainant's mother has also acknowledged that she was fully aware that the Complainant's father was managing the account and the family finances. The Provider states that the Complainant's mother designated the account as the recipient account for child benefit payments and she subsequently exercised her authority to change the account receiving those benefits, in **August 2014**.

The Provider states that when the Complainant reached the age of seven, it did not proactively seek a specimen signature as there was no requirement to do so as the original signing authority on the account remained in place. The Provider submits that if it had received a specimen signature, the signing authority on the account would have been updated and this would have superseded the original mandate.

Addressing the withdrawals from the account, the Provider states that it acted in accordance with the existing mandate furnished by the Complainant's parents at account opening in **January 2002**. The Provider submits that all funds disbursed from the account were effected on the signature of the authorised signatory who is the father of the Complainant. The Provider then refers to the withdrawal section of the account's terms and conditions.

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The Provider states that it adhered to the signing authority on the Complainant's account. The Provider states that it did not inform the Complainant or her parents of any error, as no error had occurred. The Provider says that it incorrectly stated in a letter dated **11 August 2017** that the signing authority on the account was not adhered to, upon the Complainant attaining the age of seven. The Provider further clarifies that it omitted to reference in its letter dated **14 July 2017** the provision that the mandate would only change upon the Complainant attaining seven years of age upon receipt of the specimen signature. The Provider states that it *"... apologises for the confusion that this has caused."*

The Provider also says that the Complainant's mother received *"... an element of incorrect information ..."* during a telephone conversation on **4 August 2017**. The Provider states that the Complainant's mother was incorrectly advised that a signature from both a parent and the child, were required to make withdrawals from the account as a result of the child being a minor. The Provider *"... recognise[s] that this was factually incorrect information."*

The Provider states that account statements from the date of account opening were issued annually in the month of March. The mailing label was in the name of the Complainant and the Complainant's father. The Provider states that the statements were sent to the address of the family home in [location]. The Provider states that on **30 November 2012**, it was notified of a change in address by the Complainant's father, and its system was updated to reflect this. The Provider states that from that date to present, account statements were sent to the Complainant at this new address.

In its submissions to this Office the Provider has also set out in detail its compliance with the ***European Communities (Payment Services) Regulations 2009***.

The Provider states that the account converted to a Student Account when the Complainant turned thirteen years old. This was to reflect a child entering secondary school and to

"... allow the customer access to other bank services, e.g. Phone and Internet Banking, Mobile Banking and an Optional Debit Card."

The Provider states that a letter issued to the Complainant on **24 February 2015**, when I note the Complainant was 13 years old, which advised her that the conversion to a student account would occur two months after the date of issue of that letter.

The Complaint for Adjudication

The complaint is that the Provider wrongfully permitted an unauthorised third party (the Complainant's father) to act as an authorised signatory on her [specified product] account and make withdrawals from this account after her seventh birthday.

Time Limits

The conduct complained of in this matter is that the Provider wrongfully permitted an unauthorised person (the Complainant's father) to make withdrawals from her junior type account following her seventh birthday in **2008**, continuing over a number of years thereafter. I note from the statements of account furnished in evidence, that this conduct ceased in or around late **2014**. I am satisfied, having regard to provisions of **Section 51(5)(a)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the conduct complained of is conduct of a continuing nature and, consequently, the complaint meets the required time limits pursuant to the Act.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 8 May 2020, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

Account Application/Authorisation Form

The Complainant was approximately 3 months old when the account in question was opened in her name, by her parents. The application/authorisation form specified the basis of the account operation, and was signed by both of the Complainant's parents on **10 January 2002**.

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I note that the relevant part of the form specified as follows:

"I/We, being the Parent(s)/Guardian(s) of the [specified account type] have read and accept the Terms and Conditions governing the [specified account type] Account set forth in the Conditions of Use printed overleaf and hereby request and authorise [the Provider] to open a [specified account type] for [the Complainant] and to effect withdrawals at debit of the [specified account type] Account as follows:

(a) during the period prior to the [Complainant] attaining seven years, upon the signature(s) of

[Complainant's father's name – signed] (parent/guardian)

(b) during the period following upon the [Complainant] attaining seven years, upon the signature(s) of either the:-

(i) (parent/guardian) or*

(ii) the [Complainant] with (parent/guardian) or*

(iii) the [Complainant] solely

provided that in the case of (b)(ii) and (iii) above a specimen signature of the [Complainant] has been furnished to the Bank and witnessed by me/us – ..."

I note that the authorised signature for the purposes of part (a) was the Complainant's father and that for the period following the Complainant's seventh birthday, option (b)(iii) was selected by the Complainant's parents, by way of a tick.

I also note that while the above form refers to certain terms and conditions governing the account, the Provider states in its response to this investigation, at paragraph 3, that it is unable to supply a copy of the terms and conditions of the account that were in effect on the account opening date on **11 January 2002**.

Account Statements

The Complainant was issued with annual account statements in March of each year in respect of her account, to the address specified. The statements furnished in evidence by the Provider begin in **April 2006**, when the Complainant was 4 years old. I note that these statements were initially addressed to the Complainant with her name appearing on the first line of the address. The name of the Complainant's father was inserted in parenthesis underneath the Complainant's name. From around **March 2013**, statements were addressed solely to the Complainant.

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The Provider states that two letters were issued to the Complainant, dated **28 March 2012** and **24 December 2014** regarding unpaid standing orders on the account. The Provider advises that it does not have copies of the original letters issued to the Complainant and has instead supplied a copy of the template letter issued to the Complainant. While it is unsatisfactory that the Provider does not hold copies of the original letters, I note that the template letter states:

"You currently have a Standing Order [Standing Order Number] for amount [Amount] set up on NSC [NSC], account number [Account Number], which is payable to [Payee].

Unfortunately, the last two payment instructions on this Standing Order have been returned unpaid due to insufficient funds in your account. We wish to advise you, that should the next payment be unpaid, your Standing Order will automatically be cancelled.

Should this occur and you wish to continue with this Standing Order, you can set up a new Standing Order on ... Alternatively, you can complete a new Standing Order form, which must be verified at your branch."

It is of course unclear as to how an account of the type in question, using a title which included the word "**Saver**" was considered suitable for the use of a standing order to facilitate payments out, but in the absence of the terms and conditions of the account in question from the Provider, it does not appear that this issue can be clarified.

Telephone Recordings

In a telephone conversation which took place between the Provider and the Complainant's mother on **15 June 2017**, when the Complainant was 15 years old, the Complainant's mother explained:

"Even though the intention of setting up the account was so that, I suppose technically like any married couple when I was setting it up I thought sure look it if we put it into the kids account now we won't know it is there and it'll be kept for a rainy day ... that money was technically supposed to be there for the kids ... My daughter has absolutely no knowledge of any of this, so when it comes down to it ... she actually has no knowledge even of the money ... she was never inside in that bank ..."

The conversation then discussed bank statements and the Complainant's mother stated:

"Oh no [the Complainant's father would] have opened everything to do with banks. They would come to the house, they would've come to the house and he would have grabbed them all ..."

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Analysis

It is clear from the application/authorisation form signed by both of the Complainant's parents, that the Complainant's father was authorised to make withdrawals from the account during the period prior to the Complainant reaching seven years of age. The form also provides for a change in the relevant authorisation upon the Complainant turning seven years old.

In this respect, I note that the Complainant's parents chose the third option on part (b) of the form. This meant that withdrawals from the account could only be made on the Complainant's sole signature following her seventh birthday. However, this option did not come into effect automatically. The application form made it clear that for this option to become effective, a specimen of the Complainant's signature witnessed by one or both of her parents, was required.

This did not however occur and the Provider continued to permit the Complainant's father to authorise transactions on the account.

Parts (a) and (b) of the form are clear in that they relate to defined periods of time. Part (a) relates to the period prior to the Complainant attaining her seventh birthday and part (b) relates to the period following the Complainant's seventh birthday. The form makes clear that the authority provided for by part (a) was for a fixed and definite duration. I am satisfied that this authority ceased to have effect on the expiry of that period, on the Complainant's seventh birthday.

The form does not contain any provision for the continuation of the signing authority authorised by part (a) following the Complainant's seventh birthday. Neither does it provide for the continuation of this authority in the event that a specimen signature for the Complainant is not provided. Rather, I am satisfied that it anticipates a change of mandate at that time, without which "*withdrawals at debit of the*" account should not have been possible.

I do not accept the Provider's contention that because a specimen signature was not furnished, the signing authority which had been vested in the Complainant's father by part (a) continued beyond her seventh birthday. This would be totally contrary to option (b)(i) and (b)(iii) of the form. Significantly, option (b)(i) expressly provides for one or both of the Complainant's parents to have signing authority on the account following the Complainant's seventh birthday. This option was not selected by them in 2002. Therefore, if the authority of the Complainant's father was to continue beyond her seventh birthday this option should have been selected.

Accordingly, I take the view that there was no valid signing authority on the account once the Complainant reached her seventh birthday, because her father's authority had expired and the Complainant's signing authority had not been fully put into effect. I note that following the Complainant's seventh birthday, a large volume of debits were however made to her account by her father.

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The Provider did not seek a specimen signature from the Complainant or her parents once she reached her seventh birthday. The Provider submits that it was not obliged to do so. While the Provider may not have been obliged to request a specimen signature for the Complainant, the Provider was however obliged to ensure that withdrawals and transfers from the account were being effected by the person who had the correct and valid authority. This was particularly important where the Provider was offering various forms of signing authority on an account such as the one at issue in this complaint, with the signing authority due to change once the child reached the age of seven.

I am satisfied accordingly that the Provider was obliged to ensure that, once the Complainant reached her seventh birthday, the appropriate authority was in place regardless of the source of funds being deposited into the account or indeed regardless of any understanding it held as to the purpose for which the funds were being used. This meant ensuring that the person authorised by part (a) no longer had authority to manage the account unless authorised by part (b)(i). Therefore, I accept that the Provider wrongfully permitted the Complainant's father to withdraw funds from the Complainant's account following her seventh birthday.

The transactions on the account before the Complainant turned seven years old, are not at issue in this complaint given that those were effected on the basis of the mandate which the Complainant's parents had put into effect. I note however, that debits were permitted beyond that date and indeed some 6 months after the Complainant turned 7 years old, a sum of €25,000 was debited to the account, reducing the balance to approximately €5,000.

Over the following years, multiple child benefit payments were credited to the account in respect of what appears to have been 4 children, together with some additional "SDM" benefits. In addition, ongoing debits were transacted to the account and the account appears to have been operated by the third party (the Complainant's father) as if it were in fact his own personal account, which facilitated ongoing monthly standing order payments from the account.

Indeed I note that in 2012, a large deposit of approximately €6,000 was made to the account before being transferred out 3 weeks later "TO DAD". It is unclear as to why the Provider's money laundering obligations, did not trigger a review of the account operation at that time. Whatever the explanation however, I note that an additional €66,000 approximately, was withdrawn from the account from March 2009 onwards, notwithstanding that the withdrawals did not meet the required mandate on the account.

The audio evidence in this complaint suggests that the Complainant was unaware of the existence of her account. The Provider says that the Complainant was sent annual account statements by the Provider. I note that these were initially addressed to the Complainant and her father and then addressed solely to the Complainant, but it is also relevant to note in that context, that the Complainant's father was permitted by the Provider to change the correspondence address on the account in 2012, just after the Complainant turned 12 years old.

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The Complainant's mother states in the call recordings with the Provider that she first became suspicious of the transactions taking place on the account in **2014**, and indeed it seems that action of some sort was taken at that time, as no further child benefit credits were made to the account after September 2014. The matter was then raised with the Provider in May 2017.

In its submission to this Office dated **17 May 2019**, the Provider apologises for the confusion caused by what it now says was incorrect information contained in its letters dated **14 July 2017** and **11 August 2017**, and also advanced to the Complainant's mother during a telephone conversation which took place on **4 August 2017**:

"In acknowledgement of our service failings in that regard and the length of time it has taken the Bank to address same, the Bank would like to offer the Complainant a goodwill gesture payment in the amount of €2,000 in full and final settlement of this dispute."

I do not accept however, that the information in the letter sent to the Complainant's representative on 14 July 2017 was incorrect. I note that this information included the following:-

"From my investigations your daughter was not asked to sign any of these documents because contrary to the account signing authority mandate, our [location] branch allowed [the Complainant's father] to continue to have signing authority on the account. In light of the concerns raised on this account, all future transactions will be on the sole signature of [the Complainant]".

Likewise, I take the view that the information made available in the Provider's letter to the Complainant's representative on 11 August 2017 was correct when it stated:-

"We are sorry that the signing authority on [the Complainant's] account was not adhered to upon [the Complainant] attaining seven years..."

Somewhat remarkably, during July and August 2017, I note that the Provider sought to assuage the Complainant's representative's concerns by advising as follows:-

"[The Complainant's father] informed us that all funds withdrawn by lump sums and standing orders from [the Complainant's] account, went to the benefit of the family and the family home."

Likewise, in August 2017 the Provider advised as follows:-

"We are satisfied that the money withdrawn by [the Complainant's father] post October 2008 was used for the benefit of the family and the family home."

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It is entirely unclear as to how the Provider formed this opinion (which it chose to share with the Complainant's representative in July and August 2017) regarding the manner in which the monies which the Provider had wrongfully permitted as debits on the Complainant's account after October 2008, had been put to use. Whether the Provider's opinion in that regard was or was not accurate, is not relevant to the issues to be considered by this office. It was not a matter for the Provider to concern itself with how the monies in question had been utilised. Rather, the Provider had been asked to investigate funds withdrawn from the Complainant's account and in my opinion, had it done so correctly at that time, it would have come to the conclusion that the debits permitted on the account after October 2008, had been contrary to the mandate on the account. It was the Provider which had made this product available to the Complainant's parents in 2002. Similarly, it was the Provider which had made the mandate options available to the Complainant's parents at that time, and likewise it was the Provider which failed then to implement that change of mandate in October 2008, when the Complainant turned 7 years of age.

Accordingly, I am satisfied that the complaint against the Provider should be upheld.

In marking my decision in that regard, I note that the Complainant's representative has made it clear, that the Complainant was at all material times, unaware of the existence of the account. Indeed in the telephone recordings, the Complainant's representative refers to the account as "*the kids' account*" and the desire at the time the account was opened to ensure that the money would be "*there for the kids*".

This information goes towards explaining the level of benefit being paid into the account, which was far greater than the amount of child benefit for one child. Whatever arrangements however the Complainant's parents made in respect of these extensive benefits, those arrangements included the monies being paid into an account in the Complainant's name, with a mandate permitting the Complainant's father to transact on the account until the Complainant turned 7 years old in late 2008, and with a mandate thereafter anticipating that the Complainant alone would be permitted to transact on the account. This has been the position since July/August 2017 when the Provider confirmed that only the Complainant would be permitted from then to transact on the account; the Provider failed to implement that mandate in late 2008.

Accordingly, noting that the Provider wrongfully permitted withdrawals from the Complainant's account, on a continuing basis from late 2008 onwards until late 2014, I consider it appropriate to direct the Provider to reimburse the account with all of the withdrawals which were permitted contrary to the mandate, for the period from 27 October 2008 onwards. For the avoidance of doubt this includes the withdrawal of 30 November 2012 and every other withdrawal of funds from the account, up to and including December 2014.


In addition, I consider it appropriate to direct the Provider to re-calculate the interest which ought to have been paid to the credit of the account, had the withdrawals in question not been effected.

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Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2) (b)** and **(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of, by reimbursing the account with all of the funds withdrawn contrary to the account mandate, during the period from 27 October 2008 to December 2014. I also direct the Provider to re-calculate and apply the interest which ought to have been paid to the credit of the account, had those withdrawals in question not been permitted, and I direct the Provider to implement these directions within a period of 35 days of this decision.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

2 June 2020

Pursuant to **Section 62** of the **Financial Services and Pensions Ombudsman Act 2017**, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

- (a) ensures that—
 - (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.